

TERMS AND CONDITIONS

- 1. Lease Agreement:** You agree to lease from us the equipment described under "ITEM DESCRIPTION" and on any attached Schedule (hereinafter, with all replacement parts, repairs, additions and accessories, referred to as the "Equipment") and as modified by Supplements to this Lease from time to time signed by you and us. You authorize us to insert or correct missing information on this Lease, including your accurate legal name, serial numbers and any other information describing the Equipment. You authorize us to change the amount of each lease payment by not more than 15% due to changes in the equipment configuration which may occur prior to our acceptance of this lease. We will send you copies of any changes.
- 2. Title to Equipment:** We own the Equipment and you have the right to use it under the terms of this Lease.
- 3. Lease Commencement:** This Lease will commence upon your acceptance of the applicable Equipment. When you receive the Equipment, you agree to inspect it and verify your acceptance by telephone or, at our request, by delivery of written evidence of acceptance satisfactory to us. Upon acceptance, your obligations under this Lease will become absolute and unconditional, and are not subject to cancellation, reduction or setoff for any reason whatsoever. All payments will be made to us in accordance with the applicable Schedule at our address or at such other place as we may designate in writing. Interim rent shall be in an amount equal to 1/30th of the monthly rental, multiplied by the number of days between rent commencement date and the first payment due date. For any payment that is not received by its due date, you agree to pay a late charge equal to the higher of 10% of the amount due or \$22 (not to exceed the maximum allowed by law) as reasonable collection costs.
- 4. Security Deposit:** The security deposit is non interest bearing and is to secure your performance under this Agreement. Any security deposit made may be applied by us to satisfy any amount owed by you, in which event you will promptly restore the security deposit to its full amount as set forth above. If all conditions are fully completed with and provided you have not ever been in default of this Agreement in the Default section, the security deposit will be refunded to you after the return of the equipment in accordance with the Return of Equipment section.
- 5. WARRANTY DISCLAIMER: WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABILITY. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT AND DEALER BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. YOU LEASE THE EQUIPMENT "AS IS." NO REPRESENTATION OR WARRANTY OF THE DEALER WITH RESPECT TO THE EQUIPMENT WILL BIND US, NOR WILL ANY BREACH THEREOF RELIEVE YOU OF ANY OF YOUR OBLIGATIONS HEREUNDER. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS LEASE.**
- 6. Statutory Finance Lease:** You agree that this Lease qualifies as a statutory finance lease under Article 2A of the Uniform Commercial Code. To the extent you are permitted by applicable law, you waive all rights and remedies conferred upon a lessee by Article 2A (sections 508-522) of the Uniform Commercial Code.
- 7. Security Interest:** If this Lease is deemed to be a secured transaction, you grant us a security interest in the Equipment to secure all your obligations under this Lease.
- 8. Use, Maintenance and Repair of Equipment: YOU WILL USE THE EQUIPMENT ONLY IN THE LAWFUL CONDUCT OF YOUR BUSINESS AND NOT FOR PERSONAL, HOUSEHOLD OR FAMILY PURPOSES.** You will not move the Equipment from the equipment location listed in this agreement or schedule without our advance written consent. You will give us reasonable access to the Equipment so that we can check the Equipment's existence, condition and proper maintenance. At your cost, you will keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. You will not make any permanent alterations to the Equipment. You will keep the Equipment free and clear of all liens. You assign to us all of your rights, but none of your obligations, under any purchase agreement for the Equipment. We assign to you all our rights under any Dealer warranties, so long as you are not in default.
- 9. Taxes and Lease Charges:** You agree to pay all taxes, costs and expenses incurred by us as a consequence of the ownership, sale, lease or use of the Equipment, including all sales, use and documentary stamp taxes.
- 10. Indemnity:** You will indemnify and hold us harmless from any and all liability, damages or loss, including reasonable attorney's fees, arising out of the ownership, use, condition or possession of the Equipment, except to the extent directly caused by our gross negligence or willful misconduct. This Indemnity will survive the termination of this Lease.
- 11. Risk of Loss; Insurance:** You are responsible for the risk of loss or for any destruction of or damage to the Equipment. No such loss or damage relieves you from the payment obligations under any Lease. You will keep the Equipment insured against all risks of loss or damage for not less than the replacement cost of the Equipment naming us as additional insured and loss payee. You will also carry public liability insurance naming us as additional insured. Upon request, you will provide us a certificate or other evidence of insurance acceptable to us. Should you fail to provide proof of insurance prior to commencement of this agreement, we reserve the right to enroll you in our property damage coverage program and bill you a monthly property damage surcharge of up to .0035 of the equipment cost for your failure to provide proof of insurance as required under this agreement. This charge will cover in part our administrative costs, credit risk and other costs and may include a profit. If any of the Equipment is lost, stolen or damaged you will, at your option and cost, either (a) repair the item or replace the item with a comparable item reasonably acceptable to us or (b) pay us the sum set forth in the Remedies section.
- 12. Right to Perform:** If you fail to comply with any provision of this Lease, we may, at our option, perform such obligations on your behalf. Upon invoice you will reimburse us for all costs incurred by us to perform such obligations.
- 13. Representations:** (a) You represent and warrant to us that (1) you have the lawful power and authority to enter into this Lease, and (2) the individuals signing this Lease and any Supplement have been duly authorized to do so on your behalf, (3) you will provide us such financial information as we may reasonably request from time to time, (4) all financial information provided (or to be provided) is (or will be) accurate and complete in all material respects, (5) you will promptly notify us in writing if you move your principal place of business or there is a change in your name, state of formation, or ownership, and (6) you will take any action we reasonably request to protect our rights in the Equipment. (b) We represent and warrant to you that (1) we have the lawful power and authority to enter into this Lease, and (2) the individuals signing this Lease have been duly authorized to do so on our behalf.
- 14. Default:** You will be in default under this Lease if: (a) we do not receive any payment due under that Lease within ten (10) days after its due date, (b) you fail to meet any of your obligations in the Lease (other than payment obligations) and do not correct such default within 10 days after we send you written notice of such default, (c) you become insolvent, are liquidated or dissolved, merge, transfer a material portion of your ownership interests or assets, stop doing business, or assign rights or property for the benefit of creditors, (d) a petition is filed by or against you under any bankruptcy or insolvency law, (e) any representation made by you is false or misleading in any material respect, or (f) you default on any other agreement with us or our assigns.
- 15. Remedies:** If you are in default, we may, at our option, do any or all of the following: (a) retain your security deposit, if any, (b) terminate this Lease, (3) require that you pay (1) all amounts due and payable by you or accrued under this Lease, plus (2) the present value of all remaining payments to become due under each Lease (discounted at 6% or the lowest rate allowed by law), and (3) (i) the amount of any purchase option and, if non is specified, 20% of the original equipment cost, which represents our anticipated residual value in the Equipment or (ii) return the Equipment to a location designated by us and pay to us the excess, if any, of the amount payable under clause 3 (i) above over the Fair Market Value of the returned Equipment as determined by us in our reasonable discretion, (d) recover interest on any unpaid balance at the rate of 8% per annum, and (e) exercise any other remedies available to us at law or in equity. You agree to pay our reasonable attorney's fees and actual court costs including any cost of appeal. If we have to take possession of the res to pay the cost of repossession.
- 16. Purchase Option:** At the end of the Term provided you are not in default, and upon 30 day's prior written notice from you, you will either (a) return all the Equipment, or (b) purchase all the Equipment as is, without any warranty to condition, value or title for the Fair Market Value of the Equipment plus applicable sales and other taxes.
- 17. Automatic Renewal:** This Lease will automatically continue on a month-to-month basis unless cancelled by either party upon 30 day's prior written notice from you, and you shall pay us the same lease payments and lease charges as applied during the Term until the Equipment is returned to us or you pay us the applicable purchase price (and taxes).
- 18. Return of Equipment:** If (a) a default occurs, or (b) you do not purchase the Equipment at the end of the Term pursuant to a stated purchase option, you will immediately return the Equipment to any location(s) we may designate in the continental United States. The Equipment must be returned in "Average Saleable Condition" and properly packed for shipment in accordance with our recommendations or specifications, freight prepaid and insured. "Average Saleable Condition" means that all of the Equipment is immediately available for use by a third party, other than you, without the need for any repair or refurbishment. All Equipment must be free of markings. You will pay us for any missing or defective parts or accessories.
- 19. Assignment:** We may, without your consent, assign or transfer any Equipment or this Lease, or any rights arising under this Lease, and in such event our assignee or transferee will have the rights, power, privileges and remedies of lessor hereunder, but none of the obligations. Upon such assignment you agree not to assert, as against our assignee, any defense, setoff, recoupment, claim of counterclaim that you may have against us. You will not assign, transfer or sublease this Lease or any rights thereunder or any Equipment subject to this Lease without our prior written consent.
- 20. Personal Property Tax (PPT):** You agree at our discretion to (a) reimburse us annually for all personal property and similar taxes associated with the ownership, possession or use of the Equipment or (b) remit to us each billing period our estimate of the prorated equivalent of such taxes. You agree to pay us an administrative fee for the processing of such taxes.
- 21. Tax Indemnity:** You agree to indemnify us for the loss of any income tax benefit caused by your acts or omissions inconsistent with our entitlement to certain tax benefits as owner of the Equipment.
- 22. Governing Law:** Both parties agree to waive all rights to a jury trial. This Master Agreement and each schedule shall be governed by the laws of Minnesota. You consent to the jurisdiction and venue of the Federal and State Courts of Minnesota.
- 23. Miscellaneous:** This Lease contains the entire agreement between you and us and may not be modified except as provided therein or in writing signed by you and us. We will not accept payment in cash. If you so request, and we permit the early termination of this Lease, you agree to pay a fee for such privilege. Notices must be in writing and will be deemed given five days after mailing to your or our mailing address. If a court finds any provision of this Lease to be unenforceable, all other terms of this Lease will remain in effect and enforceable. You agree that any delay or failure to enforce our rights under this Lease do not prevent us from enforcing any rights at a later time. In no event will we charge or collect any amounts in excess of those allowed by applicable law. Time is of the essence.

FISCAL FUNDING ADDENDUM

LESSEE INFORMATION

Full Legal Name WEBB COUNTY DBA Name (If Any) _____
 Billing Address 1110 WASHINGTON STREET, SUITE 101 Phone (956) 523-4125
 City LAREDO Country USA State TX Zip 78040

EQUIPMENT INFORMATION

Equipment Location (If not same as above) _____
 City LAREDO Country USA State TX Zip 78040

QUANTITY	MODEL NO	EQUIPMENT DESCRIPTION (ATTACH SCHEDULE IF NECESSARY)	QUANTITY	MODEL NO	EQUIPMENT DESCRIPTION (ATTACH SCHEDULE IF NECESSARY)
<u>1</u>	<u>ES457</u>	<u>SN SCFLD 48993</u>			

The above described WEBB COUNTY ("Lessee") warrants that it has funds available to pay rents ("Lease Payments") until the end of its current appropriation period. In the event its legislative body or funding authority does not appropriate funds to be paid to Lessor for the above described Equipment ("Equipment"), Lessee may, upon prior written notice to Lessor, effective 60 day after the giving of such notice or upon the exhaustion of the funding authorized for the then current appropriation period, whichever is later, return the Equipment to Lessor, at Lessee's expense; and thereupon, be released of its obligation to make all rental payments (Lease Payments) to Lessor due thereafter, provided: (1) The Equipment is returned to Lessor as provided for in the above described Lease ("Lease"), (2) the foregoing notice states the failure of the legislative body or funding authority to appropriate the necessary funds as reason for cancellation, and (3) the notice is accompanied by payment of all amounts then due to Lessor under the Lease.

In the event Lessee returns the Equipment pursuant to the terms of this Addendum, Lessor shall retain all sums paid hereunder by Lessee, including the Security Deposit (if any) specified in the Lease.

If the provisions of this Addendum are utilized by Lessee, Lessee agrees not to purchase, lease or rent any other functionally similar equipment for the balance of the Lease term following Lessee's exercise of its termination rights hereunder.

This Addendum will not be construed so as to permit the Lessee to terminate the Lease in order to acquire any other equipment or obtain funds directly or indirectly to perform essentially the same application for which the Equipment is intended.

LESSEE SIGNATURE

Signature X [Signature]
(MUST BE SIGNED BY AUTHORIZED AGENT, REPRESENTATIVE, OR OFFICER OF GOVERNMENT ENTITY)
 Print Name TANO E. TIJERINA
 Title WEBB COUNTY JUDGE Date 1-27-15
 For WEBB, COUNTY OF Name of Government Entity

ACCEPTED BY LESSOR

Signature X [Signature]
 Title FA Date 2-20-15
 For 25325701 Legal Name of Corporation or Partnership

SUP107

**Addendum
To
Lease Agreement Between
Toshiba Financial Services, Inc. and Webb County, Texas
Concerning Toshiba E-Studio 457 Digital Color Copier
For the Webb County Law Library**

BETWEEN:

Webb County ("Lessee")
1000 Houston Street
Laredo, Texas 78040

AND

Toshiba Financial Services, Inc. ("Lessor")
10231 Kotzebue
San Antonio, Texas 78217

Now therefore, the parties agree to modify, delete and/or include the following terms and conditions in the above referenced "Lease Agreement. The following provisions and covenants supersede prior negotiations, representations or agreements, either written or oral, and where there is a conflict between provisions of this addendum and the provisions set forth in the Standard Form "FMV Lease Agreement" (2 pages) between Webb County, Texas, and Toshiba Business Solutions of Texas, or any other Contract Documents, the provisions set forth herein shall supersede and have full force and effect and become a part of the above referenced contract for all intent and purposes.

**LEASE AGREEMENT
TERM AND CONDITIONS PROVISIONS**

1. The language dealing with "Personal Guaranty" on page one (1) of the Standard Lease Document ("FMV Lease Agreement) is deleted in its entirety.
2. The last sentence of the paragraph of the Terms and Conditions entitled "Lease Commencement" is deleted in its entirety and replaced by:

"Pursuant to section 2251.021, Texas Government Code, a payment by a governmental entity is overdue on the 31st day after payment is due and pursuant to section 2251.025, Texas Government Code, an overdue payment bears interest at the rate of one (1) percent and the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday."

3. Paragraph number nine (9) of Terms and Conditions entitled "Taxes and Lease Charges" is deleted in its entirety and replaced with:

"Lessor and Lessee agree that Webb County is a corporate and political body under the laws of the State of Texas and Webb County claims exemption from sales and use taxes under Texas Tax Code Ann. §151.309, as Amended. Webb County shall provide to Lessor Exemption Certificates, upon request. Lessor and Lessee further agree that Lessee shall pay no personal property taxes or similar taxes and governmental charges associated with the ownership, possession or use of the equipment, subject to this agreement, which Lessor is required to pay, nor reimburse Lessor for any such charges."

4. Paragraph number ten (10) of the Terms and Conditions entitled "Indemnity" is deleted in its entirety and replaced by:

"Lessor is not responsible for any loss or injuries caused by the installation or use of the Equipment. Lessor and Lessee agree that **under the Texas Constitution, Article III, Section 52(a); Article VIII, Section 3, Article XI, Section 3, and Article XI, Section 7**, and laws of the State of Texas, Lessee, Webb County, Texas cannot enter into an Agreement whereby Lessee agrees to indemnify or hold harmless any other party; therefore, all references of any kind to indemnifying holding or saving harmless for any reason whatsoever are hereby deleted."

5. Paragraph number twenty (20) of the Terms and Conditions entitled "Personal Property Tax (PPT)" is deleted in its entirety and replaced by:

"Lessor and Lessee agree that Webb County is a corporate and political body under the laws of the State of Texas and Webb County claims exemption from sales and use taxes under Texas Tax Code Ann. §151.309, as Amended. Webb County shall provide to Lessor Exemption Certificates, upon request. Lessor and Lessee further agree that Lessee shall pay no personal property taxes or similar taxes and governmental charges associated with the ownership, possession or use of the equipment, subject to this agreement, which Lessor is required to pay, nor reimburse Lessor for any such charges."

6. Paragraph number twenty-two (21) of the Terms and Conditions entitled "Tax Indemnity" is deleted in its entirety and replaced with:

"Lessor and Lessee agree that **under the Texas Constitution, Article III, Section 52(a); Article VIII, Section 3, Article XI, Section 3, and Article XI, Section 7**, and laws of the State of Texas, Lessee, Webb County, Texas cannot enter into an Agreement whereby Lessee agrees to

Indemnify any other party; therefore, all references of any kind to

indemnifying, holding or saving harmless for any reason whatsoever are hereby deleted.”


7. Paragraph number twenty-two (22) of the Term and Conditions entitled “Governing Law” is deleted in its entirety and replaced with:

“Both parties agree to waive all right to a jury trial. This Master Agreement and each schedule shall be governed and construed according to the laws of the State of Texas. Jurisdiction and venue for any action or claim arising out of the Master Agreement shall be in the Federal and/or State Courts of Webb County, Texas”

8. Webb County does and shall not waive or relinquish any immunity or defense on behalf of itself, its commissioners, offices, employees and agents as a result of the execution of this Agreement and performance of the functions and obligations described herein.

WITNESS OUR HANDS effective the 20 day of February, 2015.

WEBB COUNTY:




Tano E. Tijerina, Webb County Judge

TOSHIBA FINANCIAL SERVICES, INC.

By: 

Representative

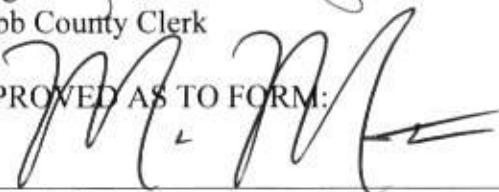
ATTESTED:



Margie Ramirez Ibarra
Webb County Clerk



APPROVED AS TO FORM:



Marco A. Montemayor
Webb County Attorney*

*By law, the County Attorney's office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).